

## MERC and the OPEN MEETINGS ACT LEGISLATION

*The proposed legislation (SB 316) provides that Section 3(7) of the Open Meetings Act stating that the OMA should not apply to certain public bodies only when deliberating the merits of a case should also apply to the Michigan Employment Relations Commission (MERC).*

MERC is a quasi-judicial body with a primary function to administer the Public Employment Relations Act. MERC operates similar to the NLRB – though on a state level. MERC adjudicates statutory violations of labor law, including alleged unfair labor practices, disputes over bargaining unit composition, and other issues related to public employee representation.

MERC decisions are appealed directly to the Michigan Court of Appeals. According to Section 3(7) of the OMA, certain state commissions and boards with functions similar to MERC are exempt when deliberating the merits of a case. They include:

Worker's Compensation Appeal Board  
Employment Security Board of Review  
State Teacher Tenure Commission  
Public Service Commission

MERC's responsibilities run parallel to those agencies delineated in Section 3(7); yet, MERC is not exempt.

National Labor Relations Board precedent is often followed at MERC; yet, the NLRB is not subject to the requirement that case deliberations be open to the public. According to the OMA, all MERC deliberations must take place at a properly noticed open meeting. This has a chilling effect on its ability to engage in any meaningful judicial deliberations, free discussion and exchange of ideas.

MERC is a three member body; two Commissioners and one Commission Chair. Commissioners are only part-time appointments and, typically, they do not work in MERC offices. They may live in different locations and are together only at monthly meetings. So, according to the OMA, they can talk and deliberate about pending cases only at those monthly meetings.

The constraints of the OMA can have an impact on the amount of time it takes for a decision to be rendered, especially those of a complex nature.

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